discuss others. Section 4 authorizes a court, which would otherwise have jurisdiction in admiralty 'of the subject matter of a suit arising out of the controversy between the parties' to a written agreement for arbitration, to 'make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.' Section 8 explicitly provides that where a cause of action is 'otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings,' and the court may then 'direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award'.

In this instance, the libel against the vessel came directly within the provision of section 8. But the petitioner insists that the District Court 'had no power under that section to make an order for arbitration of the proceeding against the Marine Transit Corporation, *in personam.*' Section 8, it is said, applies 'only to proceedings *in rem* or proceedings *in personam* where there has been an attachment of the property of the respondent', and there was no such attachment in this case. And it is contended that, aside from section 8, the Act does not provide for the granting of an order for arbitration 'in a pending suit.' With respect to the last contention, it may be observed that section 3 provides for a stay in a pending suit until arbitration has been had in accordance with the terms of the agreement, and it would be an anomaly if the court could grant such a stay and could not direct the arbitration to proceed, although the court, admittedly, could have made an order for the arbitration if no suit had been brought. We think that the petitioner's argument is based upon a misconception of

[2]The Committee on the Judiciary of the House of Representatives, in its report upon the bill, which with the Senate amendment became the Act in question, said:

"The purpose of this bill is to make valid and enforcible agreements for arbitration contained in contracts involving interstate commerce or within the jurisdiction of admiralty, or which may be the subject of litigation in the Federal courts. . . . The remedy is founded also upon the Federal control over interstate commerce and over admiralty." House Rep. No. 96, 68th Cong., 1st sess. See, also, Cong. Rec., vol. 66, pt. 3, 68th Cong., 2d sess., pp. 3003, 3004.

the statute. The intent of section 8 is to provide for the enforcement of the agreement for arbitration, without depriving the aggrieved party of his right, under the admiralty practice, to proceed against 'the vessel or other property' belonging to the other party to the agreement. The statutory provision does not contemplate 'the vessel or other property', which may be seized, as being the party to the arbitration agreement. By the express terms of section 8, the libel and seizure are authorized as an initial step in a proceeding to enforce the agreement for arbitration, and it is the parties to that agreement who may be directed to proceed with the arbitration. Here, the Marine Transit Corporation was the party to the arbitration agreement. It had used the tug as a facility for the transportation of the libellants' wheat, and the dispute as to liability was within the promise to arbitrate. If there was to be an order for arbitration, it would appropriately run against the Marine Transit Corporation to enforce that obligation. It was not necessary or proper that the order should run against the tug. Nor was it necessary that the court in directing the arbitration should attempt to split the proceeding with respect to the demand in the suit *in personam* against the corporation and that *in rem* against the tug. The Marine Transit Corporation was before the court both as respondent and as owner and claimant of the vessel seized, and the agreement to arbitrate bound the corporation in both capacities. We conclude that the order directing the arbitration of the issues arising under the contract between the libellants and the Marine Transit Corporation was authorized by the statute.

We do not conceive it to be open to question that, where the court has authority under the statute, as we find that it had in this case, to make an order for arbitration, the court also has authority to confirm the award or to set it aside for irregularity, fraud, *ultra vires* or other defect.[3] Upon the motion to confirm the award in this case, objections to the proceedings before the arbitrators were overruled by the District Court and are not pressed here. It is, however, urged against the award that it was signed by only four of the five arbitrators. The statute is silent with respect to a decision by a majority, but it does authorize action by a majority in compelling the attendance of witnesses

[3]See sections 10 to 12.

(section 7). In the absence of statutory requirement, the question as to the necessity of unanimity in the decision on the merits would be determined by the arbitration agreement, and it does not appear that under the agreement in this instance unanimity was needed. Nor does the record show that specific objection upon this point was taken in the District Court upon the motion for confirmation, and the rules of the New York Produce Exchange with respect to arbitrations under its Canal Grain Charter Party No. 1 (to which the petitioner's booking agreement was made subject) are not set forth. We think that there was no error in the ruling of the Circuit Court of Appeals upon this point.

The petitioner also insists that, under section 9, a judgment may be entered upon the award only if the parties have so agreed in their contract for arbitration and that the agreement here does not so provide. But the agreement for arbitration stipulated that the award should be 'final and binding'. The award was accordingly binding upon the Marine Transit Corporation both as respondent and as the owner and claimant of the tug, and the District Court entered its decree upon the award against that corporation under the authority expressly conferred by section 8.

The Circuit Court of Appeals also upheld the decree as against the stipulator, as its stipulation conformed to Admiralty Rule 8 of the Southern District of New York[4] and the decree was in accord with the stipulation and admiralty practice. *The Palmyra*, 12 Wheat. 1, 10; *The Wanata*, 95 U. S. 600, 611. We express no doubt as to the correctness of this conclusion, which the petitioner contests, but we have no occasion to deal with the question, as the stipulator has taken no steps to obtain a review of the decree in this Court.

We find no ground for disturbing the decree as unauthorized by the statute.

Second. The constitutional question raised by this application of the statute, is whether it is compatible with the maintenance of the judicial power of the United States as extended to cases of admiralty and maritime jurisdiction (Const. Art. III).

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[4]This rule is as follows: "Such stipulation shall contain the consent of the stipulators, that if the libellant or petitioner recover, the decree may be entered against them for an amount not exceeding the amount named in such stipulation and that thereupon execution may issue against their goods, chattels, lands, and tenements or other real estate.

In *Red Cross Line* v. *Atlantic Fruit Company, supra* (at pp. 122, 123), this Court pointed out that in admiralty 'agreements to submit controversies to arbitration are valid', and that 'reference of maritime controversies to arbitration has long been common practice'. 'An executory agreement', said the court, 'may be made a rule of court' and the 'substantive right created by an agreement to submit disputes to arbitration is recognized as a perfect obligation'. The question, then, is one merely as to the power of the Congress to afford a remedy in admiralty to enforce such an obligation. It was because the question was one of remedy only, that this Court decided that a State, by virtue of the clause saving to suitors 'the right of a common law remedy',[5] had the power 'to confer upon its courts the authority to compel parties within its jurisdiction to specifically perform an agreement for arbitration, which is valid by the general maritime law, as well as by the law of the State', and is contained in a maritime contract made within the State and there to be performed. *Red Cross Line* v. *Atlantic Fruit Company, supra,* at p. 124. The general power of the Congress to provide remedies in matters falling within the admiralty jurisdiction of the Federal courts, and to regulate their procedure, is indisputable. The petitioner contends that the Congress could not confer upon courts of admiralty the authority to grant specific performance. But it is well settled that the Congress, in providing appropriate means to enforce obligations cognizable in admiralty, may draw upon other systems. Thus the Congress may authorize a trial by jury in admiralty, as it has done in relation to certain cases arising on the Great Lakes.[6] Courts of admiralty may be empowered to grant injunctions, as in proceedings for limitation of liability.[7] Similarly, there can be no question of the power of Congress to authorize specific performance when that is an appropriate remedy in a matter within the admiralty jurisdiction. As Chief Justice Taney said in *The Genesee Chief,* 12 How. 443, 460: "The Constitution declares that the judicial power of the United States shall extend to 'all cases

[5]Judicial Code, sec. 24 (3); U. S. C., Tit. 28, sec. 41 (3).

[6]Act of February 26, 1845, c. 20, 5 Stat. 726; R. S. 566, U. S. C., Tit. 28, sec. 770; The Genesee Chief, 12 How. 443, 459, 460; The Eagle, 8 Wall. 15, 25.

[7]Hartford Accident & Indemnity Co. *v.* Southern Pacific Co., 273 U. S. 207, 218.

of admiralty and maritime jurisdiction'. But it does not direct that the court shall proceed according to ancient and established forms, or shall adopt any other form or mode of practice. . . In admiralty and maritime cases there is no such limitation as to the mode of proceeding, and Congress may therefore in cases of that description give either party right of trial by jury, or modify the practice of the court in any other respect that it deems more conducive to the administration of justice."

In this instance a remedy is provided to fit the agreement. The Congress has authorized the court to direct the parties to proceed to arbitration in accordance with a valid stipulation of a maritime contract, and to enter a decree upon the award found to be regular and within the terms of the agreement. We think that the objection on constitutional grounds is without merit.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.